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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,199	09/03/2003	Yukio Fujii	57454-974	1761

7590 08/17/2005  
MCDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
WASHINGTON, DC 20005-3096

EXAMINER
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DUNWOODY, AARON M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/653,199

Applicant(s)

FUJII, YUKIO

Examiner

Aaron M. Dunwoody

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5843369, Obara et al.

In regards to claim 1, Obara et al disclose a rolling bearing ring of a constant velocity joint, employing steel of a component composition containing (comprising), as alloying elements, at least 0.5 mass % and 0.7 mass % at most of carbon, at least 0.5 mass % and 1.0 mass % at most of silicon, and at least 0.5 mass % and 1.0 mass % at most of manganese with a remainder of iron and inevitable impurities, and having a structure in which a raceway surface is subjected to induction hardening.

In regards to claim 2, Obara et al disclose the steel being employed having a component composition satisfying  $L \geq 50$  in an equation of:

$$L = 105.4 \times (C\%)^{-0.84} \times (Si\%)^{1.18} \times (Mn\%)^{1.24}$$

where C%, Si% and Mn% are a percentage content (mass %) of carbon, silicon and manganese, respectively.

In regards to claim 3, Obara et al disclose a support component of rolling and swinging motion, comprising the rolling bearing ring of a constant velocity joint defined in claim 1.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US patent 5780165, Fukumoto et al.

In regards to claim 1, Fukumoto et al discloses a rolling bearing ring of a constant velocity joint, employing steel of a component composition containing (comprising), as alloying elements, at least 0.5 mass % and 0.7 mass % at most of carbon, at least 0.5 mass % and 1.0 mass % at most of silicon, and at least 0.5 mass % and 1.0 mass % at most of manganese with a remainder of iron and inevitable impurities, and having a structure in which a raceway surface is subjected to induction hardening.

In regards to claim 2, Fukumoto et al disclose the steel being employed having a component composition satisfying  $L \geq 50$  in an equation of:

$$L = 105.4 \times (C\%)^{-0.84} \times (Si\%)^{1.18} \times (Mn\%)^{1.24}$$

where C%, Si% and Mn% are a percentage content (mass %) of carbon, silicon and manganese, respectively.

In regards to claim 3, Fukumoto et al disclose a support component of rolling and swinging motion, comprising the rolling bearing ring of a constant velocity joint defined in claim 1.

### ***Response to Arguments***

Applicant's arguments filed 8/11/2005 have been fully considered but they are not persuasive. The Applicant argues that claim 1 excludes the 10.5% to 13.5% of Cr required by Obara et al, and excludes the 3.5% to 7.0% of Cr required by Fukumoto et al. The Examiner disagrees. Claims in a pending application should be given their

broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974). The Examiner interprets the term "containing" as "comprising". The terms "comprising" and "comprising essentially" render the claim open for the inclusion of unspecified elements, the term "consisting of" closes the claim as to the inclusion of elements other than those recited in the claim, and the term "consisting essentially of" renders the claim open **only** for the inclusion of unspecified elements which do not materially affect the basic characteristics of the subject matter of the claim. Ex parte Davis 80 USPQ 448, 450 (PatBdApp 1948). Therefore, the prior art of record discloses the claimed invention.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

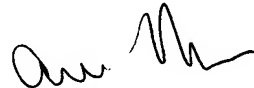
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Dunwoody whose telephone number is 571-272-7080. The examiner can normally be reached on 7:30 am - 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aaron M Dunwoody  
Primary Examiner  
Art Unit 3679

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